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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/614,937
Filing Date: July 11, 2000
Appellant(s): PHILYAW, JEFFRY JOVAN

Gregory M. Howison
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 20, 2006 appealing from the Office action mailed September 12, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5978773	HUDETZ et al.	11-1999
6,297,727	NELSON, JR.	10-2001
5,905,248	RUSSEL et al.	5,905,248

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims. Because Appellant referenced the paragraph numbers in the Final Office action of September 12, 2005, the paragraph number have been maintained here:

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-12, 16-18, 19-30, and 33, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hudetz et al. (U.S. Patent Number 5,978,773), hereinafter referred to as Hudetz, in view of Nelson (U.S. Patent Number 6,297,727) and further in view of Russell et al. (U.S. Patent Number 5,905,248), hereinafter referred to as Russell.

9. Regarding claim 1, Hudetz disclosed a method of displaying a web page to a user (Figure 6, column 8 lines 17-20) comprising the steps of retrieving location information associated with the unique code from a database; the location information corresponding to a location of the web page on a remote location disposed on the network (Figure 4, column 9 lines 59-62, column 11 lines 33-60); in response to retrieving the location information, connecting the activation system to the remote location (column 11 lines 28-

Art Unit: 2144

37); and presenting the web page corresponding to the location information of the remote location to the user via the activation system (Figure 6, column 9 lines 54-62).

10. Hudetz taught the invention substantially as claimed. However, Hudetz did not expressly disclose a method of providing a portable triggering device having a unique code stored therein and extracting the unique code from the triggering device with an activation system when the portable triggering device is proximate to the activation system, the activation system disposed on a network and physically separates from the triggering device.

11. Hudetz suggested exploration of art and/or provided a reason to modify the method with the portable triggering device feature (Figure 8, column 6 lines 28-33, column 7 lines 17-28, column 12 lines 11-21).

12. In an analogous art, Nelson disclosed a method of providing a portable triggering device having a unique code stored therein (Abstract, column 3 lines 10-13, column 5 lines 42-50) and extracting the unique code from the triggering device with an activation system when the portable triggering device is proximate to the activation system (column 1 lines 40-47, lines 56-61, column 3 lines 10-13, column 6 lines 8-25), the activation system disposed on a network and physically separates from the triggering device (column 3 lines 10-13, column 11 lines 9-12).

13. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Hudetz with the teachings of Nelson to include the portable triggering device in order to offer users a more automatic method in obtaining the identification code using the interrogator unit and the triggering device (Nelson, column 6

Art Unit: 2144

lines 8-21) since this would allow users to access published locations without having to manually enter the published address through input devices (Hudetz, column 2 lines 53-55).

14. The combination of Hudetz and Nelson taught the invention substantially as claimed. However, the combination of Hudetz and Nelson did not teach in response to retrieving the location information, *automatically* connecting the activation system to the remote location.

15. Hudetz suggested exploration of art and/or provided a reason to modify the method with the automatic connection with the remote location (column 2 lines 52-67).

16. Russell disclosed a method wherein in response to retrieving the location information, *automatically* connecting the activation system to the remote location (Title, Abstract, column 2 lines 46-67, column 3 lines 1-26).

17. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combined method of Hudetz and Nelson with the teachings of Russell to include the automatic connection feature in order to allow users to access published locations automatically without manual inputs (Hudetz, column 2 lines 52-67).

18. Regarding claim 2, Nelson disclosed a method wherein the triggering device in the step of providing is a portable wireless passive transponder (Figure 1 a sign 22, Figure 3 sign 34, column 1 lines 40-47, column 5 lines 42-47, column 7 lines 1-5).

19. Regarding claim 3, Nelson disclosed a method wherein the passive transponder has the unique code stored therein in a non-volatile memory (Abstract, column 3 lines 10-13, column 5 lines 42-47, column 1 lines 56-61, column 12 lines 4-13).

20. Regarding claim 4, Hudetz disclosed a method wherein the unique code in the step of providing is uniquely associated with the web page (Figure 4, column 9 lines 54-62).

Art Unit: 2144

21. Regarding claim 5, Nelson disclosed a method wherein the triggering device further includes a unique transponder identification code stored therein, the unique transponder identification code being exclusively associated with that triggering device (column 5 lines 59-66, column 6 lines 9-25).

22. Regarding claim 6, Nelson disclosed a method wherein the step of extracting further includes extracting the unique transponder identification code from the triggering device with the activation system (column 6 lines 9-25, column 5 lines 59-66, lines 39-54).

23. Regarding claim 7, Nelson disclosed a method wherein the step of retrieving location information further comprises the step of matching the unique code and the unique transponder identification code with the location information of the database (column 3 lines 1-5, column 5 lines 59-66, column 11 lines 48-55).

24. Regarding claim 8, Nelson disclosed a method wherein the activation system in the step of extracting comprises a transmitter and a receiver each operatively connected to a interrogator unit [computer], the transmitter for activating the triggering device with an activating signal, and the receiver for receiving a triggering signal having the unique code contained therein (Figure 3, column 6 lines 13-23, lines 39-54).

25. Regarding claim 9, Nelson disclosed a method wherein the step of retrieving location information further comprises the step of matching the unique code with the location information of the database (column 9 lines 42-45, column 10 lines 29-36, lines 3-10).

26. Regarding claim 10, Hudetz disclosed a method wherein the database in the step of retrieving is local to the activation system (column 7 lines 51-57).

27. Regarding claim 11, Hudetz disclosed a method wherein the database in the step

Art Unit: 2144

of retrieving is located at an intermediary location on the network (Figure 1 sign 60, Figure 4, column 7 lines 43-51).

28. Regarding claim 12, Hudetz disclosed a method wherein the step of retrieving location information from the intermediary location further comprises the step of appending to the unique code routing information which defines the location of the intermediary location on the network such that the unique code is transmitted to the intermediary location in accordance with the appended routing information (column 11 lines 28-37).

29. Regarding claim 16, Hudetz disclosed a method wherein the step of connecting is performed using a browser program (Figure 6, column 1 lines 46-52, column 10 lines 55-67).

30. Regarding claim 18, Hudetz disclosed a method wherein the step of presenting comprises displaying the web page to the user via display operatively connected to the activation system (Figure 6, column 9 lines 54-62).

31. Regarding claims 19-30, 33, and 35, the apparatus corresponds directly to the method of claims 1-12 and 16-18, and thus these claims are rejected using the same rationale.

32. Since all the limitations of the claimed invention were disclosed by the combination of Hudetz, Nelson, and Russell, claims 1-12, 16, 18, 19-30, 33, and 35 are rejected.

33. Claims 13-15 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hudetz et al. (U.S. Patent Number 5,978,773), hereinafter referred to as Hudetz, in view of Nelson (U.S. Patent Number 6,297,727), in view of Russell et al. (U.S. Patent Number 5,905,248), hereinafter referred to as Russell as applied above, and further in view

Art Unit: 2144

Wellner (U.S. Patent Number 5,640,193).

34. Regarding claim 13, Hudetz disclosed a method of displaying a web page to a user (Figure 6, column 8 lines 17-20) comprising the steps of retrieving location information associated with the unique code from a database, the location information corresponding to a location of the web page on a remote location disposed on the network (Figure 4, column 9 lines 59-62, column 11 lines 33-60); in response to retrieving the location information, connecting the activation system to the remote location (column 11 lines 28-37); and presenting the web page corresponding to the location information of the remote location to the user via the activation system (Figure 6, column 9 lines 54-62). Nelson disclosed a method of providing a portable triggering device having a unique code stored therein (Abstract, column 3 lines 10-13, column 5 lines 42-50) and extracting the unique code from the triggering device with an activation system when the portable triggering device is proximate to the activation system (column 1 lines 40-47, lines 56-61, column 3 lines 10-13, column 6 lines 8-25), the activation system disposed on a network and physically separates from the triggering device (column 3 lines 10-13, column 11 lines 9-12). Russell disclosed a method wherein in response to retrieving the location information, *automatically* connecting the activation system to the remote location (Title, Abstract, column 2 lines 46-67, column 3 lines 1-26).

35. The combination of Hudetz, Nelson, and Russell did not disclose a method wherein the activation system in the step of extracting further includes a unique interface identification code associated with the activation system. However, in an analogous art, Wellner disclosed a method wherein the activation system in the step of extracting further includes a unique interface identification code associated with the activation system (Abstract, column 1 lines 36-

Art Unit: 2144

42, column 7 lines 3-10).

36. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combined teachings of Hudetz and Nelson with the teachings of Richten [Wellner] to include a unique interface identification code in order to allow a user to control the selection of electronic services to be provided to the user by one or more servers over a communication medium (Wellner, column 1 lines 33-36) because this enables the selected electronic service transmitted from the servers to be received by the user's receiver (Wellner, column 1 lines 42-44).

37. Regarding claim 14, Wellner disclosed a method wherein the step of retrieving location information further comprises the step of appending the unique interface identification code to the unique code and transmitting it to the database (column 1 lines 36-42, column 5 lines 46-55).

38. Regarding claim 15, Wellner disclosed a method wherein the step of retrieving location information further comprises the step of matching the unique code and the unique interface identification code with the location information of the database (column 1 lines 36-42, column 4 lines 46-52). Hudetz also disclosed this matching step at column 8 lines 47-53).

39. Regarding claims 31-32, the apparatus corresponds directly to the method of claims 13-15, and thus these claims are rejected using the same rationale.

40. Since all the limitations of the claimed invention were disclosed by the combination of Hudetz, Nelson, Russell, and Wellner, claims 13-15 and 31-32 are rejected.

41. Claims 1-4, 8, 9, 10-11, 16, 18-22, 24, 26, 28-29, 33, and 35 are rejected under 35

Art Unit: 2144

U.S.C. 103(a) as being unpatentable over Buckley, et al. (U.S. Patent Number ~~5,903,225~~ 6,446,871), hereinafter referred to as Buckley in view of Schmitt et (U.S. Patent Number 5,903,225), hereinafter referred to as Schmitt.

42. Regarding claims 1 and 19, Buckley disclosed a method and an apparatus for displaying a web page to a user (Figure 9) comprising: a portable device of a user having a unique code stored therein (Figure 1, column 4 lines 49-61, column 5 lines 49-61); and an activation system disposed on a network for extracting the unique code from said device, said activation system physically separate from said device (column 4 lines 49-61, column 5 lines 49-61, column 8 lines 60-column 9 line 7, column 10 lines 32-39); wherein location information associated with said unique code is retrieved from a database, said location information correspond to a location of the web page on a remote location disposed on said network (column 4 lines 62-column 5 lines 8, column 8 lines 60-column 9 line 7); wherein in response to said location information being retrieved from said database, said activation system is automatically connected to said remote location (column 3 lines 31-41, column 8 lines 60-column 9 line 7); wherein the corresponding web page of said remote location is presented to the user via said activation system (Figure 9, column 8 lines 60-column 9 line 7, column 12 lines 5-14).

43. Berkley taught the invention substantially as claimed; however, Berkley did not expressly disclose a portable *triggering* device having a unique code stored therein and extracting the unique code from the triggering device with an activation system *when the portable triggering device is proximate to the activation system*.

44. Berkley suggested exploration of art and/or provided a reason to modify the method and apparatus with other features such as wireless and portable triggering device (column 4

Art Unit: 2144

lines 56-61, column 5 lines 49-55, column 11 lines 27-37, column 12 lines 52-58).

45. In an analogous art, Schmitt disclosed a portable triggering device [passive transponder] of a user having a unique code stored therein (Abstract, Figure 14, column 2 lines 51-60), which is activated when the portable triggering device is proximate to the activation system (column 3 lines 7-18, lines 53-57, column 12 lines 47-59, column 13 lines 3-15, column 14 lines 26-36).

46. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method and apparatus of Berkley with the teachings of Schmitt to include a portable triggering device of a user having a unique code stored therein in order to eliminate the cumbersome scanner because the triggering device would communicate with the activation system automatically when the user is in contact with the activation system (Schmitt, column 12 lines 4-55). In addition, the portable triggering device would prevent the users through the inconvenience of locating and manipulating the reader or scanner system (Schmitt, column 2 line 61-column 3 line 3).

47. Regarding claims 2 and 20, Schmitt disclosed a method and an apparatus wherein the triggering device is a portable wireless passive transponder (Abstract, column 3 lines 7-11, lines 53-57).

48. Regarding claims 3 and 21, Schmitt disclosed a method and an apparatus wherein said passive transponder has said unique code stored therein in a non-volatile memory (column 3 lines 14-17, lines 22-26, column 12 lines 11-14, lines 25-33).

49. Regarding claims 4 and 22, Buckley disclosed a method and an apparatus wherein said unique code is uniquely associated with the webpage (column 8 lines 60-column 9

Art Unit: 2144

lines 7).

50. Regarding claims 8 and 24, Schmitt disclosed a method and an apparatus wherein said activation system comprises a transmitter and a receiver each operatively connected to a computer, said transmitter for activating said triggering device with an activating signal, and said receiver for receiving a triggering signal having said unique code contained therein (Figure 14, column 2 lines 51-60, column 3 lines 7-14).

51. Regarding claims 9 and 26, Buckley disclosed a method and an apparatus wherein said unique code is matched with said location information of said database (column 2 lines 45-52, column 5 lines 3-15, column 7 lines 39-49).

52. Regarding claims 10 and 28, Buckley disclosed a method and an apparatus wherein said database is local to said activation system (Figure 7 sign 90, column 4 line 62-column 5 line 8).

53. Regarding claims 11 and 29, Buckley disclosed an apparatus wherein said database is located at an intermediary location on said network (column 4 line 62-column 5 line 8, column 8 lines 60-column 9 lines 7).

54. Regarding claims 16 and 33, Buckley disclosed a method and an apparatus wherein said activation is connected to said remote location using a browser program (Figures 4, 5, 9, column 11 lines 18-27, column 12 lines 5-14).

55. Regarding claims 18 and 35, Buckley disclosed a method and an apparatus wherein the webpage is presented to the user via a video display operatively connected to said activation system (Figures 4, 5, 9, column 11 lines 18-27).

Art Unit: 2144

56. Since all the limitations of the claimed invention were disclosed by the combination of ~~Berkley~~ Buckley and Schmitt, claims 1-4, 8, 9, 10-11, 16, 18-22, 24, 26, 28-29, 33, and 35 are rejected.

(10) Response to Argument

I. Rejections under 35 U.S.C. 103

The appellants argue in substance that:

“The various combinations of references proposed by the Examiner are not supported by a proper suggestion or motivation to make each proposed modification. This means that the first criterion (i.e. requirement for some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.) for a prima facie rejection has not been met, which in turn means the Examiner has failed to carry the burden of establishing a prima facie rejection.” See Brief, page 6, lines 5-9 and page 5, lines 15-19.

“In addition, certain claim limitations are not taught or suggested by the cited combinations, which means that the third criterion (i.e. that the prior art references must teach or suggest all the claim limitations) for a prima facie rejection has not been met and that the Examiner has failed to carry the burden of establishing a prima facie rejection for this independent reason.” See Brief, page 6, lines 9-12 and page 5, lines 19-21.

“As a preliminary matter, [Appellant] notes that the Examiner relies on *In re Fine* and *In re Jones* and, while both are valid cases, they are also eighteen and fourteen years old, respectively. [Appellant] has presented two recent cases (*Cardiac Pacemakers* and *Princeton Biochemicals*) reiterates the established principle that care must be taken in order to avoid the use of hindsight to “prevent[] evaluation of the invention part by part.” *Id.*, page 7, lines 6-11.

The examiner respectfully disagrees. In response to Appellant’s argument that there is no suggestion to combine references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed.Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner has established a proper combination of Hudetz, Nelson, and Russell by providing detailed reasons for exploration of art, suggestion or motivation to combine, and reasons for combining. For instance, Hudetz disclosed,

Art Unit: 2144

“[t]he foregoing embodiment is just one example. Many alternatives are possible. For example, in lieu of a bar code scanning device, a card reader could be employed. The card reader would read a magnetic stripe affixed to a card or other printed matter. The card would contain human-readable information about a network resource, and the magnetic strip would contain the resource’s numeric or mnemonic address in machine-readable format.’ (Column 12, lines 11-17). Hudetz goes on to suggest “[a]lternatively, a RF data collection scanner or CCD scanning system could be used.” (Hudetz, column, 12, lines 17-18).

The artisan here, having read the teachings of Hudetz, would have searched the analogous art to find other types of devices, including portable wireless devices and automated web page display as suggested by Hudetz, to modify its teachings in order to enhance the functionality of the system by adapting the widely implemented use of portable wireless devices and automated computer processes. In the analogous art, the artisan would have found the teachings of Nelson and Russell disclosing a portable triggering device having a unique code stored therein and extracting the unique code from the triggering device with an activation system when the portable triggering device is proximate to the activation system and further to automate the connection of the user to the retrieved URLs. Because both using portable wireless devices and automating computer processes are widely desired features in order to enhance user interface to the system, the artisan would have been motivated to incorporate the teachings of Nelson and Russell into the system of Hudetz.

Regarding Appellant’s arguments regarding the age of *In re Fine* and *In re Jones*, as admitted by Appellant both are valid cases. Therefore, age of the cases is of no consideration and

Art Unit: 2144

reliance on the cases are viewed to be proper.

A. Independent claims 1 and 19 as rejected by the combination of Hudetz, Nelson, and Russell

On pages 7, line 18 through page 9, line 21, the Appellant sets forth the limitations that Hudetz does not teach. These limitations, specifically “a method of providing a portable triggering device having a unique code stored therein and extracting the unique code from the triggering device with an activation system when the portable triggering device is proximate to the activation system, the activation system disposed on a network and physically separates from the triggering device” and “automatically connecting the activation system to the remote location” are not taught by Hudetz, as was admitted by the examiner in the rejection. See Brief, page 9, lines 3-4 and 9-14. The examiner relies on Nelson and Russell for these limitations.

Also, to the extent Appellant is arguing against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Appellant further argues:

“In an attempt to remedy the deficiencies of Hudetz, the Examiner relies on the Nelson reference... [in Nelson] “there is an activation procedure wherein the code is retrieved from the triggering device or the RFID tag. However, there is no motivation or suggestion that this could replace a scanner. First, it operates considerably different than a scanner in that the code is permanently associated therewith, as opposed to a scanning device which scans an external code, wherein the scanner has no unique code stored therein. Even though the transponder system typically will have some methodology wherein the code is retrieved and utilized for verification and even access, there is no suggestion that granting an access would in any way result in obtaining any location information that will correspond to location of a web page on a remote location disclosed on a network.” Brief, page 12, lines 6-23.

Art Unit: 2144

Appellants further argue "[p]aragraph 13 of the Final Office action (dated September 12, 2005) states that "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Hudetz with the teachings of Nelson to include the portable triggering device in order to offer users more automatic method in obtaining the identification code using the interrogator unit and the triggering device (Nelson, column 6 lines 8-21) since this would allow users to access published locations without having to manually enter the published address through input devices (Hudetz, column 2 lines 53-55)...[col. 6, lines 8-21] of Nelson simply describes the invention of Nelson, and [Appellant] can find no teaching or suggestion in the cited text of modifying Hudetz with Nelson." Brief, page 13, lines 3-25.

"Even assuming, for purposes of argument, that a broad reading of the initial sentence [of Hudetz] (lines 53-55) lends some credence to the Examiner's contention of a suggestion for modifying Hudetz with Nelson, the remaining portion of the paragraph undermines such a broad reading. As required by MPEP 2141.02(IV), '[a] prior art reference must be considered in its entirety, i.e. as a whole including portions that would lead away from the claimed invention.' [Appellant] submits that the Office Action's selective recital of a portion of the paragraph above ignores the portion that leads away from the claimed invention." Brief, page 14, lines 22-28. See also, page 15, lines 8-16.

The examiner respectfully disagrees with the Appellant. In response to applicant's argument that "the transponder system [it] operates different than a scanner in that the code is permanently associated therewith, as opposed to a scanning device which scans an external code, wherein the scanner has no unique code stored therein" and "Hudetz clearly is a system that teaches a scanner that must have the ability to scan one or a plurality of codes, so a unique code stored in the scanner for locating a web would make the Hudetz system valueless", the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Exparte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Further, Hudetz, Nelson and Russell are analogous for two reasons. First, both Hudetz and Nelson are prior art in the field of retrieving information (i.e. a unique code, bar code, or identification code) associated with an object over a network. Secondly, both Hudetz and Nelson are concerned with the problem of remotely extracting or retrieving information regarding an object over a network in order to enable quick and efficient identification of the object. Hudetz

Art Unit: 2144

does this by scanning a bar code, and transmitting that information to the user computer. Nelson does this by transmitting an identification code stored in the RFID tag. In both instances, information regarding an object is retrieved by a remote computer.

Additionally, Hudetz suggests the system is not limited to a bar code scanning device as disclosed in one embodiment. As noted by Appellants (Brief, page 11, line 21 – page 13, line 5), Hudetz suggests alternatively using different types of data formats as well as different types of devices such as RF data collection scanners in the system disclosed (Hudetz, col. 12, lines 10-18). Therefore, the artisan of ordinary skill would have incorporated the RFID technology as taught by Nelson, into the system of Hudetz, for the purpose of enabling wireless and portable device implementation. Additionally, the artisan would have modified the system further to incorporate the automatic web page retrieval of Russell for the purpose of allowing users to access web pages automatically without manual inputs.

The examiner disagrees with the Appellant's argument that col. 2, line 52-55 (including lines 56-67 and col. 3, lines 1-13) teaches away from the teachings of either Nelson or Russell. Hudetz states a desire to eliminate the need for users to manually enter information, specifically URL addresses into browsers. Hudetz achieves this by automatically loading unique code information, i.e. UPC bar codes, from products into the system. This method does not teach away from Nelson's system for automatically loading unique code information, i.e. identification code, associated with an object into its system. Both systems alleviate the user from manual entry of data by automating the procedure.

Appellants also argue

Art Unit: 2144

“Hudetz is teaching away from the publication of a ‘mnemonic address or verbal description of a network location...along with the location’s numeric address in bar code format.’ However, Russell is specifically directed to a ‘System and method for carrying out information-related transactions using web documents employing transaction enabling applets automatically launch and executed in response to reading URL-encoded symbols pointing thereto.’... Accordingly, the text of Hudetz directly following that cited by the Examiner actually teaches away from the combination of Russell and Hudetz, and this text must be considered under MPEP 2141.02(IV).” Simply put, Hudetz teaches reading a UPC code which is converted into a URL. Russell teaches simply reading a URL and automatically displaying the page to the user.

The examiner respectfully disagrees with the Appellant. Russell was cited to teach the limitation of “automatically connecting the activation system to the remote location,” i.e. automatically retrieving the web page once the scanned UPC was retrieved and corresponding URL retrieved. Irregardless of whether Hudetz or Russell retrieves a URL or UPC initially, a URL of obtained by the system and retrieved for the user. The combination of references simply enables automatic retrieval of the URL.

Appellant argues that:

“examiner’s use of the term ‘activation’ is not supported in Hudetz,” and further that Hudetz “is distinct from the claims wherein the activation system is separate from the triggering device and ‘extracts’ the unique code from the ‘triggering’ device...there is no activation system that is remote from the triggering device that in any way is disclosed as causing an ‘extraction’ of the unique code from the triggering device....Therefore, the computer to which the scanner is connected cannot be considered to be the activation system, as the activation system is a physically separate device from the triggering device.” (emphasis added). See Brief, page 8, lines 1-15 and page 9, lines 3-8.

Similarly, Appellants argue that “[t]he examiner indicates with the language of paragraph 42 (citing column 4, lines 49-61, column 5, lines 49-61, column 9, lines 60 – column 9, line 7; column 10 lines 32-39) that Buckley includes an ‘activation’ system...As is clearly evident, the cited text...of Buckley simply refers to a device (e.g., a personal computer) that may interact with a scanning device by receiving data therefrom and fails to disclose any type of ‘activation’ system. Accordingly, [Appellant] submits that Buckley fails to teach or suggest an ‘activation’ system as required by [Appellant’s] claims.” Brief, page 18, lines 10-12 and page 19-31.

Appellant argues limitations that are not required by the claims. When the claims are given the broadest reasonable interpretation in light of the Specification, the claims do not require the limitations argued by the Appellant. First, the Appellants argue that the activation

Art Unit: 2144

system “extracts” the unique code by causing the extraction of unique code from the triggering device. The claims do not require such a limitation. The claims merely require the step of “extracting...with an activation system” but does not require that the activation system “cause” the method step to take place. The distinction is that any external signal could be used to initiate the extracting step to begin “extracting the unique code with an activation system,” including but not limited to a user input or bar code scanner and pen reader operations. Similarly, Appellants argue that the claimed “activation” system cannot be equated with a personal computer of either Hudetz. Again, the claims merely recite an “activation system” but does not positively recite that it is the activation system that “activates” the “extracting” step. However, assuming arguendo, that the interpretation of the claims do require an “activation system” causing “extraction” as argued by the Appellant, the prior art of record as applied still teaches each and every limitation of the claims.

B. Independent claims 1 and 9 as rejected by the combination of Buckley and Schmitt

Appellants argue that the claimed “activation” system cannot be equated with a personal computer of Buckley. Again, the claims merely recite an “activation system” but does not positively recite that it is the activation system that “activates” the “extracting” step. However, assuming arguendo, that the interpretation of the claims do require an “activation system” causing “extraction” as argued by the Appellant, the prior art of record as applied still teaches each and every limitation of the claims.

~~—~~In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as detailed in the rejection above, Buckley suggested exploration of art and/or provided a reason to modify the method and apparatus with other features such as wireless and portable triggering device (column 4 lines 56-61, column 5 lines 49-55, column 11 lines 27-37, column 12 lines 52-58). One of ordinary skill in the art at the time of the invention was made would have been motivated to modify the method and apparatus of Berkley with the teachings of Schmitt to include a portable triggering device of a user having a unique code stored therein in order to eliminate the cumbersome scanner because the triggering device would communicate with the activation system automatically when the user is in contact with the activation system (Schmitt, column 12 lines 4-55). In addition, the portable triggering device would prevent the users through the inconvenience of locating and manipulating the reader or scanner system (Schmitt, column 2 line 61-column 3 line 3). Since the Examiner had properly provided some teaching, suggestion, or motivation to combine the two references, the combination of Buckley and Schmitt is valid.

C. Dependent claims 13 and 31

In response to Appellant's argument that there is no suggestion to combine the

Art Unit: 2144

teachings of Hudetz, Nelson and Russell with the multimedia service access of Wellner, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Here, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combined teachings of Hudetz and Nelson with the teachings of Wellner to include a unique interface identification code in order to allow a user to control the selection of electronic services to be provided to the user by one or more servers over a communication medium (Wellner, column 1 lines 33-36) because this enables the selected electronic service transmitted from the servers to be received by the user's receiver (Wellner, column 1 lines 42-44). The skilled artisan would recognize the benefit of the identification code in order to identify and customize services for that specific device.

D. Dependent Claims 2-12, 14-16, 18, 20-30, 32, 33, 35

Appellant relies on arguments presented for claims 1, 13, 19 or 31, responses to which are presented above.

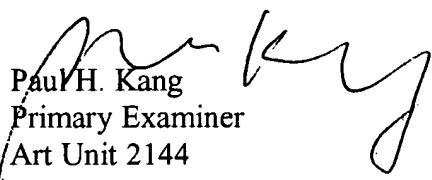
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 2144

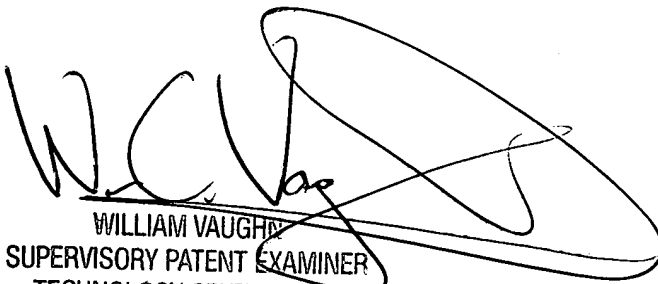
For the above reasons, it is believed that the rejections should be sustained.

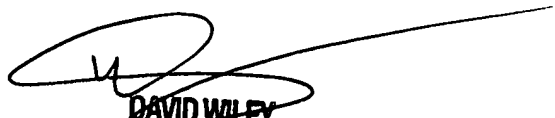
Respectfully submitted,


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